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THE HONORABLE LONNY R. SUKO

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SEP 30 2003

JAMES R. LARSEN, CLERK  
DEPUTY  
SPOKANE, WASHINGTON

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF WASHINGTON  
10 AT SPOKANE

11 GENE CAMARATA,

12  
13 Plaintiff,

14 v.

15 CITY OF ELLENSBURG, SCOTT  
16 WILLIS, NELSON NG, ANNE  
KIRKPATRICK, KITTITAS  
17 COUNTY, GENE DANA, TRACY  
WILSON, AARON LANGVIN, JEFF  
18 BEATON, JOHN KRAHENBUHL,  
ERIC NYLANDER, JEFF ST. JOHN,  
19 BETH SMITH,

20 Defendants.  
21

22  
CY  
NO. 03-3115 LRS

ANSWER OF THE ELLENSBURG  
DEFENDANTS

ANSWER OF THE ELLENSBURG  
DEFENDANTS (C03-3115 LRS) - 1

JOHNSON CHRISTIE ANDREWS & SKINNER, P.S.  
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ORIGINAL

1 COME NOW Defendants City of Ellensburg, Scott Willis, Nelson Ng and  
2 Anne Kirkpatrick ("the Ellensburg Defendants"), by and through counsel, and, by  
3 way of answer to plaintiff's Complaint for Damages ("Complaint"), admit, deny and  
4 allege as follows:

5 1. Paragraphs 1, 2 and 3 of the Complaint are admitted.

6  
7 2. Paragraphs 4 and 5 of the Complaint make no allegations for which the  
8 answering defendants need answer. To the extent an answer is required, paragraphs  
9 4 and 5 of the Complaint are denied as the answering defendants lack sufficient  
10 information to verify the truth and veracity of the matters asserted, putting plaintiff to  
11 his proof.

12 3. Paragraph 6 of the Complaint is admitted.

13  
14 4. Paragraphs 7 and 8 of the Complaint allege legal conclusions, not  
15 factual averments, for which the answering defendants need not answer. To the  
16 extent an answer is required, paragraphs 7 and 8 of the Complaint are denied, putting  
17 plaintiff to his proof.

18 5. Paragraph 9 of the Complaint is denied as the answering defendants  
19 lack sufficient information to verify the truth and veracity of the matters asserted  
20 therein, putting plaintiff to his proof.  
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1           6.     In answer to paragraph 10 of the Complaint, the answering defendants  
2 admitted that on June 3, 2000, Ellensburg Police Officers Scott Willis and Nelson Ng  
3 were dispatched to the area of 8<sup>th</sup> Avenue near Alder in Ellensburg, WA, to respond  
4 to an harassment complaint; that as the officers traveled eastbound on 8<sup>th</sup> Avenue,  
5 plaintiff was walking westbound down the middle of 8<sup>th</sup> Avenue; that based upon the  
6 observations of the officers and their interviews of eyewitnesses, the officers arrested  
7 plaintiff for disorderly conduct, handcuffed him, and transported him to the Kittitas  
8 County Jail where he was booked; that plaintiff was charged, tried and convicted of  
9 disorderly conduct; and that plaintiff's appeal of his conviction for disorderly conduct  
10 was denied. Except to the extent specifically admitted herein, paragraph 10 of the  
11 Complaint is denied.  
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13  
14           7.     Paragraphs 11, 12, 13, 14 and 15 of the Complaint are denied.

15           8.     Paragraph 16 of the Complaint alleges a legal conclusion, not factual  
16 averments, for which the answering defendants need not answer. To the extent any  
17 further answer is required, paragraph 16 of the Complaint is denied, putting plaintiff  
18 to his proof.  
19

20           9.     Paragraphs 17, 18 and 19 of the Complaint are denied.

21           10.    Paragraphs 20, 21 and 22 of the Complaint are denied.  
22

1 WHEREFORE, having fully answered the allegations of the Complaint, and  
2 by way of further answer, the Ellensburg Defendants allege the following affirmative  
3 defenses:

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5 **FIRST AFFIRMATIVE DEFENSE**

6 Plaintiff has not effected service of process on Defendants Willis, Ng or  
7 Kirkpatrick thereby denying the Court jurisdiction over the persons of these  
8 defendants.

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10 **SECOND AFFIRMATIVE DEFENSE**

11 Plaintiff has not effected sufficient process on Defendants City of Ellensburg,  
12 Willis, Ng or Kirkpatrick.

13  
14 **THIRD AFFIRMATIVE DEFENSE**

15 Plaintiff has not effected sufficient service of process on Defendants Willis,  
16 Ng or Kirkpatrick.

17  
18 **FOURTH AFFIRMATIVE DEFENSE**

19 One or more of plaintiff's allegations fail to state a claim upon which relief  
20 may be granted by this Court.  
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**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's own acts and/or omissions proximately caused or contributed to the injuries alleged herein and his recovery, if any, must be proportionately reduced.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrines of collateral estoppel and/or *res judicata*.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the illegality of his own actions.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the statute of limitations.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's conviction of disorderly conduct conclusively establishes the existence of probable cause.

**TENTH AFFIRAMTIVE DEFENSE**

Plaintiff was arrested on probable cause.

**ELEVENTH AFFIRMATIVE DEFENSE**

The acts of Defendants Willis, Ng and Kirkpatrick were reasonable and lawful such that they enjoy the privilege of qualified immunity under state and federal law.

1                   **TWELFTH AFFIRMATIVE DEFENSE**

2           Plaintiff cannot establish municipal liability under *Monell* and its progeny.

3                   **THIRTEENTH AFFIRMATIVE DEFENSE**

4           Respondeat superior liability will not lie under 42 U.S.C. §1983.

5                   **FOURTEENTH AFFIRMATIVE DEFENSE**

6           Plaintiff cannot establish any entitlement to punitive damages, and, moreover,  
7  
8   Defendant City of Ellensburg cannot be held liable for punitive damages.

9                   **FIFTEENTH AFFIRMATIVE DEFENSE**

10          Plaintiff cannot establish a conspiracy to deprive him of equal protection under  
11   the law.

12                   **SIXTEENTH AFFIRMATIVE DEFENSE**

13          The State of Washington has no statutory equivalent to 42 U.S.C. §1983  
14  
15   allowing recovery in tort for violation of rights guaranteed under the Washington  
16   Constitution.

17                   **SEVENTEENTH AFFIRMATIVE DEFENSE**

18          Neither negligence nor violations of the Washington Constitution will support  
19  
20   claims under 42 U.S.C. §1983.

1 **EIGHTEENTH AFFIRMATIVE DEFENSE**

2 To the extent plaintiff has sued Defendants Willis, Ng and Kirkpatrick in their  
3 official capacities, his allegations are cumulative of his claims against Defendant City  
4 of Ellensburg under 42 U.S.C. §1983.  
5

6 **NINETEENTH AFFIRMATIVE DEFENSE**

7 Plaintiff, who is appearing *pro se*, is not entitled to reasonable attorneys' fees  
8 under state or federal law.

9 **TWENTIETH AFFIRMATIVE DEFENSE**

10 Plaintiff's allegations against the Ellensburg Defendants are frivolous for  
11 purposes of RCW 4. 84.185 such that plaintiff is liable for the reasonable attorneys'  
12 fees and costs incurred in defending this action.  
13

14 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

15 Plaintiff's allegations against the Ellensburg Defendants are frivolous for  
16 purposes of 42 U.S.C. §1988 such that plaintiff is liable for the reasonable attorneys'  
17 fees and costs incurred in defending this action.  
18

19 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

20 Plaintiff's allegations against Defendants Willis, Ng and Kirkpatrick constitute  
21 malicious prosecution of a civil action pursuant to RCW 4.24.350 and subject him to  
22

1 liability for reasonable attorneys' fees and costs and damages, including liquidated  
2 damages.

3 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

4 Plaintiff did not comply with the claims filing provisions of RCW 4.96.

5  
6 NOW, THEREFORE, having fully answered the allegations of the Complaint  
7 and having alleged affirmative defenses, the Ellensburg Defendants pray for the  
8 following relief:

9 1. That plaintiff's Complaint be dismissed, in its entirety as against the  
10 Ellensburg Defendants, and that plaintiff takes nothing thereby;

11 2. That the Ellensburg defendants be awarded statutory attorneys' fees and  
12 costs as the Court deems reasonable;

13 3. That Defendants Willis, Ng and Kirkpatrick be awarded their  
14 reasonable attorneys' fees and damages as proven at trial; and

15 4. For such other and further relief as the Court deems just and equitable.

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1 DATED this 27<sup>th</sup> day of September, 2003.

2 JOHNSON CHRISTIE ANDREWS & SKINNER, P.S.

3  
4 By 

5 SCOTT M. BARBARA, WSBA# 20885

6 Attorneys for Defendants City of Ellensburg, Scott  
7 Willis, Nelson Ng and Anne Kirkpatrick  
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